

REMARKS

Applicant respectfully requests entry and consideration of the above amendments even though presented after a final rejection. Applicant submits that the amendments do not raise new issues or require a new search. Further, entry and consideration of the amendments may isolate issues for potential allowance or appeal. The amendments were not presented earlier in the prosecution due to a better understanding of the Examiner's position as reflected in the latest Office Action.

Summary

Claims 1-3, 5-7, 9-12, 14-16 stand in this application. Claims 4, 8, 13 and 17-19 have been canceled without prejudice. Claims 1 and 10 have been amended. Claims No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1 and 10 in order to facilitate prosecution on the merits.

35 U.S.C. § 103

At page 2, paragraph 3 of the Office Action claims 1, 2, 5-8, 10, 11 and 14-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Number (USPN) 6,765,916 to Duvvuru et al. ("Duvvuru") in view of USPN 6,651,117 to Wilson et al. ("Wilson"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1, 2, 5-8, 10, 11 and 14-17. Therefore claims 1, 2, 5-8, 10, 11 and 14-17 define over the cited references whether taken alone or in combination. For example, claims 1 and 10 recite the following language, in relevant part:

receiving said packet array;
determining an implicit resource state for each packet in
said packet array; and
copying each packet having an implicit resource state
below a predetermined threshold from said first buffer to a
second buffer.

According to the Office Action, this language is disclosed by Duvvura at column 11, lines 1-30 and column 12, lines 6-54. Applicant respectfully disagrees. Duvvura at the given cites, in relevant part, states:

...for the ATM protocol the previous four bytes are stored in the previous state in order to generate the Header Error Check (HEC) for the ATM cells...

... receiving protocol processing unit 306 forwards the data for the given channel as part of a packet, such as an ATM cell to memory control circuit 340, which stores this data into memory unit 310. Accordingly, ingress packet processing circuitry 216 retrieves these processed packets from memory unit 310 through memory control unit 340....

...receiving protocol processing unit 306 stores the current state as the previous state for the processed channel within register arrays 316a-i, at process block 510. As described above, the current state can include a number of different bytes depending on the type of protocol and protocol configuration.

... if a threshold value for a given protocol and protocol configuration has not been achieved but the completed packet has been stored in memory unit 312, transmitting protocol processing unit 308 proceeds with the processing of this packet to send to framing unit 302.

Applicant respectfully submits that the above recited language of Duvvura, arguably, teaches forwarding data as part of a packet, receiving the processed packets and storing the current state as the previous state for the processed channel within register arrays. Duvvura also, arguably, teaches proceeding with the processing of a packet and sending the packet to the framing unit despite the fact that the completed packet has been stored in the memory unit and a threshold value for the given protocol and the protocol configuration has not been achieved. Applicant respectfully submits that the teaching of Duvvura, however, is significantly different from “receiving said packet array;

determining an implicit resource state for each packet in said packet array; and copying each packet having an implicit resource state below a predetermined threshold from said first buffer to a second buffer” as recited in claims 1 and 10.

Applicant respectfully submits that Duvvura fails to disclose at least “determining an implicit resource state for each packet in said packet array” as recited in claims 1 and 10. The above recited teaching of Duvvura teaches “receiving protocol processing unit 306 stores the current state as the previous state for the processed channel within register arrays.” Applicant respectfully submits that storing the current state as the previous state is different than the above recited teaching of claims 1 and 10.

Moreover, Applicant respectfully submits that Duvvura also fails to teach, suggest or disclose “copying each packet having an implicit resource state below a predetermined threshold from said first buffer to a second buffer” as recited in claims 1 and 10. Consequently, Duvvura does not disclose the missing language of claims 1 and 10. Furthermore, Applicant respectfully submits that Wilson also fails to disclose, teach or suggest the missing language. Accordingly, Duvvura and Wilson, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claims 1 and 10.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 1 and 10 is respectfully requested. Claims 2, 5-7, 11 and 14-16 also are non-obvious and patentable over Duvvura and Wilson, taken alone or in combination, at least on the basis of their

dependency from claims 1 and 10. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

At page 4, paragraph 21 of the Office Action claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Duvvura and Wilson and further in view of USPN 5,901,139 to Shinohara (“Shinohara”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Claim 3 depends from claim 1. As discussed above, Applicant respectfully submits that Duvvura and Wilson fail to disclose each and every element of claim 1. Applicant respectfully submits that Shinohara also fails to disclose the missing language of claim 1. Consequently, claim 3 represents patentable subject matter in view of the cited references, whether taken alone or in combination, for at least those reasons given above for claim 1, and also includes additional features that further distinguish claim 3 from Duvvura, Wilson and Shinohara. Accordingly, removal of the obviousness rejection with respect to claim 3 is respectfully requested.

At page 5, paragraph 28 of the Office Action claims 9 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Duvvura and Wilson and further in view of USPN 6,944,168 to Paatela (“Paatela”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Claim 9 depends from claim 1 and claim 12 depends from claim 10. As discussed above, Applicant respectfully submits that Duvvura and Wilson fail to disclose each and every element of claim 1. Applicant respectfully submits that Paatela also fails to disclose the missing language of claims 1 and 10. Consequently, claims 9 and 12 represent patentable subject matter in view of the cited references, whether taken alone or

in combination, for at least those reasons given for claims 1 and 10 above, and also include additional features that further distinguish claims 9 and 12 from Duvvura, Wilson and Paatela. Accordingly, removal of the obviousness rejection with respect to claims 9 and 12 is respectfully requested.

For at least the reasons given above, claims 1-3, 5-7, 9-12, 14-16 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 1-3, 5-7, 9-12, 14-16 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Appl. No. 09/881,302
Response Dated February 15, 2007
Reply to Office Action of December 15, 2006

Docket No.: 1020.P11642
Examiner: England, David E
TC/A.U. 2143

It is believed that claims 1-3, 5-7, 9-12, 14-16 are in allowable form.

Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC

A handwritten signature in black ink, appearing to read 'John F. Kacvinsky', with a long horizontal flourish extending to the right.

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: February 15, 2007

4500 Brooktree Road, Suite 102
Wexford, PA 15090
(724) 933-5529